

NEBRASKA ADMINISTRATIVE CODE

TITLE 251, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 1

NEBRASKA DEPARTMENT OF MOTOR VEHICLES

**RULES AND REGULATIONS GOVERNING NOTICE AND HEARING FOR
AGENCY CONTESTED CASES PURSUANT TO THE INTERNATIONAL
FUEL TAX AGREEMENT, NEB. REV. STAT. 66-1401 THROUGH 66-1415,
NEB. REV. STAT. 66-712 THROUGH 66-740, AND THE ADMINISTRATIVE
PROCEDURES ACT, NEB. REV. STAT. 84-913 THROUGH 84-920.**

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Issue Date: _____

NEBRASKA ADMINISTRATIVE CODE

Title 251 Nebraska Department of Motor Vehicles Chapter 1

001 GENERAL.

001.01 Scope. These rules and regulations govern practice and procedure before the

Department of Motor Vehicles of the State of Nebraska pursuant to the International Fuel Tax Agreement, Neb. Rev. Stat. 66-1401 through 66-1415, Neb. Rev. Stat. 66-712 through 66-740, and the Administrative Procedures Act, Neb. Rev. Stat. 84-913 through 84-920.

001.02 **Definitions.** The following definitions shall apply as used through these rules and regulations.

001.02A **Agreement** means a cooperative fuel tax agreement entered into under section 66-1401.

001.02B **Appellant** means any person petitioning the Department pursuant to 66-1411.

001.02C **Audit** means the review of the records of any person licensed pursuant to the methods established in 66-1406 to determine if the motor fuel taxes collected under the agreement have been properly reported and paid to each state participating in the agreement.

001.02D **Base state** means the state where (a) the motor vehicles are based for vehicle registration purposes, (b) the operational control and operational records of the licensee's motor vehicles are maintained or can be made available, and (c) some mileage is accrued by motor vehicles within the fleet.

001.02E **Cancellation** means the annulment of a license and its provisions by either the licensing jurisdiction or the voluntary surrender of the license by the licensee.

001.02F **Contested case** means a proceeding before the Department in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing.

001.02G **Deficiency determination** means a determination by the Department that a licensee has unpaid motor fuel taxes or nonfiled returns assessed creating tax liability pursuant to IFTA. The Director may issue a deficiency determination based on the findings of an audit performed by employees of the Department or findings based on a deficiency determination by another state pursuant to IFTA.

001.02H **Department** means the Nebraska Department of Motor Vehicles.

001.02I **Director** means the Director of the Nebraska Department of Motor Vehicles or his or her designee and includes the Motor Carrier Services Division of the Nebraska Department of Motor Vehicles.

001.02J **Ex parte communication** means an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Ex parte communication shall not include:

001.02J1 Communications which do not pertain to the merits of the case;

001.02J2 Communications required for the disposition of ex parte matters as authorized by law;

001.02J3 Communications in a rulemaking or ratemaking proceeding; and

001.02J4 Communications to which all parties have given consent.

001.02K **Final assessment** means the amount of the deficiency determination together with interest and penalties thirty (30) days after the date on which notice was mailed to the licensee unless a written protest is filed with the Department within such thirty-day (30-day) period.

001.02L **IFTA** means the International Fuel Tax Agreement the purpose of which is to simplify the motor fuel tax licensing, bonding, reporting, and remittance requirements imposed on motor carriers involved in interstate commerce by authorizing the Director to participate in cooperative fuel tax agreements with another state or states to permit the administration, collection, and enforcement of each state's motor fuel taxes by the base state.

001.02M **Hearing officer** means the person or persons conducting a hearing, contested case or other proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge or some other title designation.

001.02N **Licensee** means a person licensed pursuant to the methods established in subdivision (2) of 66-1406.

001.02O **Motor fuel laws** means the provisions of Chapter 66, Article 14, and sections 66-712 to 66-737.

001.02P **Party** means the appellant or person by whom a contested case is brought and the Department against whom a contested case is brought and may include any person allowed to intervene in a contested case pursuant to the procedures in section 003 of these rules and regulations.

001.02Q **Person** means any individual, firm, partnership, limited liability company, agency, association, corporation, state, country, municipality, or other political subdivision. Whenever a fine or imprisonment or both are prescribed or imposed in sections 66-712 through 66-737 or 66-1401 through 66-1415, the word person as applied to a partnership, a limited liability company, or an association means the partners or members thereof.

001.02R **Petition** means the initial document filed by or with the Department that sets forth a claim or request for Department action.

001.02S **Pleading** means any written application, petition, complaint, answer, reply, notice, stipulation, objection, motion, order, or other formal written document used in a proceeding before the Department.

001.02T **Proceeding** means all matters formally made in connection with any appeal by a licensee.

001.02U **Record-keeping requirements** means such requirements as determined by the agreement pursuant to 66-1406.

001.02V **Revocation** means the withdrawal of a license and privileges by the Department.

001.02W **State** means any government of any state or country or subdivision or agency thereof participating in the International Fuel Tax Agreement.

001.02X **Suspension** means the temporary removal of privileges granted to the licensee by the Department.

001.02Y **Taxpayer** means any person who accrues liability under IFTA and

Neb. Rev. Stat. 66-1401 through 66-1415.

002 PROHIBITIONS AGAINST EX PARTE COMMUNICATIONS.

002.01 Prohibitions; When Applicable. The prohibitions found in this section shall apply beginning at the time notice for hearing is given.

002.02 Prohibitions; to Whom Applicable.

002.02A Parties and Public. No party in a contested case or other person outside the agency having interest in the contested case shall make or knowingly cause to be made an ex parte communication to the hearing officer or to an agency head or employee who is or may reasonably be expected to be involved in the decision making process of the contested case.

002.02B Persons in Decision Making Roles. No hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decision making process of the contested case shall make or knowingly cause to be made an ex parte communication to any party in a contested case or other person outside the agency having an interest in the contested case.

002.02C Investigators. No agency head or employee engaged in the investigation or enforcement of a contested case shall make or knowingly cause to be made an ex parte communication to a hearing officer or agency head who is or may reasonably be expected to be involved in the decision making process of the contested case.

002.03 Disclosure of Contacts. The hearing officer or agency head or employee who is or may be reasonably expected to be involved in the decision making process of the contested case who received or who makes or knowingly causes to be made an ex parte communication set forth in subsection 002.02A through 002.02C shall file in the record of the contested case:

002.03A All such written communication; and

002.03B Memoranda stating the substance of all such oral communications; and

002.03C All written responses and memoranda stating the substance of all oral responses to all ex parte communications.

002.03D The filing shall be made within two working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond shall be given to all parties of record; and

002.03E Filing an notice of filing provided under subsection 002.03D shall not be considered on the record and reasonable notice for purposes of the definition of ex parte communication.

003 **INTERVENTION IN A CONTESTED CASE.**

003.01 **Intervention; When Allowed.** Intervention shall be allowed when the following requirements are met:

003.01A A petition for the intervention must be submitted in writing to the hearing officer or designee at least five days before the hearing. Copies must be mailed by the appellant for intervention to all parties named in the hearing officer's notice of hearing;

003.01B The petition must state facts demonstrating that the appellant's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the appellant qualifies as an intervenor under any provision of law; and

003.01C The hearing officer or designee must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

003.02 **Granting Intervention.** The hearing officer or designee may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

003.03 **Intervention; Conditions.** If an appellant qualifies for intervention, the hearing officer or designee may impose conditions upon the intervenor's participation in the proceeding, either at the time that the intervention is granted or at any subsequent time. Those conditions may include:

003.03A Limiting the inventor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

003.03B Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

003.03C Requiring two or more intervenors to combine their presentation of evidence and argument, cross-examination, and other participation in the proceedings.

003.04 **Intervention; Orders.** The hearing officer or designee, at least 24 hours before the hearing, shall issue an order granting or denying each pending petition for intervention,

specifying any conditions and briefly stating the reasons for the order.

003.04A The hearing officer or designee may modify the order at any time, stating the reasons for the modification.

003.04B The hearing officer or designee shall promptly give notice of an order granting, denying, or modifying intervention to the appellant for intervention and to all parties.

004 COMMENCEMENT OF A CONTESTED CASE.

004.01 Notice. A licensee who receives a deficiency determination notice, license suspension or revocation notice, or wants to challenge personal liability for taxes under IFTA may file a written protest for reconsideration by petitioning the Department as specified below.

004.02 Petition, Manner of Service. A licensee who wishes to appeal a deficiency determination or license suspension or revocation, or challenge personal liability must file a written petition for hearing with the Department. A petition shall state material factual allegations and state concisely the action the Department is being requested to take, and shall contain the name of the appellant and shall be signed by the party filing the petition or when represented by an attorney, the signature of that attorney.

004.02A Address for Service of Petition. Service shall be made personally or by first-class or certified mail and delivered to the Department at 301 Centennial Mall South, State Office Building, First Floor, P.O. Box 94789, Lincoln, NE 68509-4789. Petition must be postmarked or filed with the Department within the deadlines shown in 004.02B et seq of these regulations.

004.02B Deadline for Filing Petition. Failure to file a petition and deliver the petition to the Department or to postmark the petition by the time specified in this section as shown below forecloses the licensee's right to a hearing and also results in a final assessment or cancellation of a license or permit.

004.02B1 Notice of Deficiency Determination. A petition to appeal a deficiency determination as in 001.02G and 013.01 must be filed within thirty (30) days after the date on which notice is mailed to a licensee.

004.02B2 Notice of Suspension or Revocation. The licensee or permit holder may, within thirty (30) days after the mailing of the notice of such suspension or revocation as specified in 012.03 of these regulations, petition the Department in writing for a hearing and reconsideration of such suspension or revocation.

004.02B3 Challenge to Personal Liability for Unpaid Taxes. Any corporate officer or employee who wishes to challenge personal liability for unpaid taxes shall, within thirty (30) days after the date of the written notice and demand for payment of such taxes, proceed as provided in 015 of these rules.

004.03 Party. A party to a contested case is as defined in section 001.02 of these rules and regulations.

004.04 Representation. A party may appear on his or her own behalf in a contested case proceeding or may be represented by an attorney licensed to practice in this state or other representative as permitted by law.

004.05 Pleadings. Pleadings are defined in section 001.02 of these rules and regulations. Any pleading filed in a contested case shall meet the following requirements:

004.05A The pleading shall contain a heading specifying the name of the appellant and the respondent and the title or nature of the pleading, and concisely state the purpose of the pleading. All pleadings shall be signed by the party filing the pleading, or when represented by an attorney, the signature of that attorney. Attorneys shall also include their address, telephone number and bar number.

004.05B All pleadings shall be made on white, letter-sized (8½ x 11 inches) paper and shall be legibly typewritten, photostatically reproduced, printed or handwritten. If handwritten, a pleading must be written in ink.

004.06 Filing. All pleadings shall be filed with the Department at its official central office at 301 Centennial Mall South, State Office Building, First Floor, P.O. Box 94789, Lincoln, NE 68509-4789. Filing may be accompanied by personal delivery or by mail and will be received during regular office hours of the Department.

004.07 Pleadings Subsequent to the Petition. All pleadings subsequent to the initial petition shall be served by the party filing such pleading upon all attorneys of record or other representatives of record and upon all unrepresented parties. Service shall be made personally or by first-class or certified mail. A written certificate of service shall be incorporated with or attached to each pleading filed, indicated to whom, when, where and how such pleading was served.

004.08 Hearing; How Set.

004.08A Time of Notice. Unless state law provides that a hearing is not required, a hearing date shall be set by the Department in accordance with statutory requirements and

the requirements of these rules and regulations upon timely receipt of a petition from a licensee, and upon completion of any applicable prehearing procedures as provided in section 006 of these rules and regulations, except:

004.08A1 In case of a petition filed pursuant to 004.02B2, to contest the revocation or suspension of a license, the Department shall within ten (10) days of receiving the petition set a hearing date at which the licensee may show cause why his or her license or permit should not be suspended or revoked; or

004.08A2 In case of a challenge to personal liability for unpaid taxes pursuant to 004.02B3, if the requirements of 015.02 of these rules and regulations are satisfied, the Director shall abate collections proceedings and shall grant the corporate officer or employee an oral hearing and give him or her ten (10) days notice of the time and place for such hearing. The Director may continue the hearing from time to time as may be necessary pursuant to 006.03 of these rules.

004.08B Form of Hearing Notice. A written notice of the time and place of the hearing and the name of the hearing officer, if known, shall be served by the Department upon all attorneys of record or other representatives of record and upon all unrepresented parties. Such notice shall include a written proof of service as provided in 004.07 of these rules and regulations, and filed with the Department.

004.09 Computation of Time. In computing time prescribed or allowed under these rules and regulations or the applicable statutes in which a method of computing time is not specifically provided, days will be computed by excluding the day of the act or event and including the last day of the period. If the last day of the period falls on a Saturday, Sunday or state holiday, the period shall include the next working day.

004.10 Notices; Mailing Requirements. All notices by the Department required by IFTA shall be mailed by registered or certified mail, return receipt requested, to the address of the licensee as shown in the records of the Department, except as provided in 004.11.

004.11 Notice of Personal Liability. Written notice and demand by the Department for personal liability for unpaid taxes shall be served in a manner consistent with the rules of civil procedure in Chapter 25, Article 5 for Commencement of Actions; Process in the Nebraska Revised Statutes.

005 HEARING OFFICERS; CRITERIA, QUALIFICATIONS, POWERS AND DUTIES.

005.01 Appointment. Hearing officers shall be appointed by the Director in writing. Such appointment shall be of public record in the Director's office. A hearing officer for a contested

case may be designated by the Director.

005.02 Conflict. A person who has served as investigator prosecutor, or advocated in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection 005.04.

005.03 Conflict of Supervisor. A person who is subject to the authority direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing state may not serve as hearing officer or advise a hearing officer in the same proceeding except as provided in subsection 005.04.

005.04 Consent. If all parties consent, a person who has served as, or who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may assist or advise a hearing officer in the preparation of orders.

005.05 Participation in Preliminary Determination. A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as hearing officer or advise a hearing officer in the same proceeding.

005.06 Stages of the Contested Case. A person may serve as hearing officer at successive stages of the same contested case.

005.07 Qualifications. Hearing officers shall be attorneys licensed to practice law in the State of Nebraska.

005.08 Unbiased and Impartial. The hearing officer shall be unbiased and impartial to the subject proceeding.

005.09 Recusal. No hearing officer shall participate in an appeal in which they have an interest. For good cause shown on the Director's own motion, the hearing officer may recuse his or herself from conducting the hearing. Motions for recusal shall be made in writing to the Director and must be received no later than three (3) days prior to the date of the hearing. Any party may bring a motion to recuse for good cause shown.

005.10 Powers and Duties. The hearing officer shall have the duty to conduct full, fair and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of the proceeding, and to maintain order. They shall have the following powers:

005.10A To administer oaths and affirmations;

005.10B To issue subpoenas as authorized;

005.10C To compel discovery and to impose appropriate sanctions for failure to make discovery;

005.10D To rule upon offers of proof and receive relevant, competent, and probative evidence;

005.10E To regulate the course of the proceedings in the conduct of the parties and their representatives;

005.10F To hold prehearing conferences for simplification of the issues, settlement of the proceedings, or any other purposes;

005.10G To consider and rule orally or in writing, upon all procedural and other motions appropriate in adjudicative proceedings;

005.10H To fix the time for holding the record open for additional evidence or for submission of briefs;

005.10I To exclude people from the hearing;

005.10J To issue recommended decisions, rulings, and orders as appropriate; and

005.10K To take any other action consistent with the purpose of the law.

006 PREHEARING PROCEDURES.

006.01 Prehearing Conferences and Orders. A hearing officer designated to conduct a hearing may determine, subject to the Department's rules and regulations, whether a prehearing conference will be conducted. If a prehearing conference is not held, a hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

006.01A If a prehearing conference is conducted:

006.01A1 The hearing officer shall promptly notify the agency of the determination that a prehearing conference will be conducted. The agency may assign another hearing officer for the prehearing conference; and

006.01A2 The hearing officer for the prehearing conference shall set the time and

place of the conference and give reasonable written notice to all parties or their representative of record.

006.01A3 The written notice referred to in subsection 006.01A2 shall include the following:

006.01A3a The names and mailing addresses of all parties or their representatives or other persons to whom notice is being given by the hearing officers;

006.01A3b The name, official title, mailing address, and telephone number of any counsel who has been designated to appear for the Department;

006.01A3c The official file or reference number, the name of the proceeding and a general description of the subject matter of the conference;

006.01A3d A statement of the time, place and nature of the prehearing conference;

006.01A3e A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

006.01A3f The name, official title, mailing address, and office telephone number of the hearing officer for the prehearing conference;

006.01A3g A statement that a party who fails to attend or participate in a prehearing conference, hearing or other state of a contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act; and

006.01A3h Any other matters that the hearing officer considers desirable to expedite the proceedings.

006.01B The hearing officer shall conduct a prehearing conference, as may be appropriate, to deal with such matters as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence, or cross examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a presentation of evidence and cross examination, rulings regarding issuance of subpoenas, discovery orders, and protective orders, and

such other matters as will promote the orderly and prompt conduct of the hearing. The hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

006.01C The hearing officer may conduct all or part of the prehearing conference by telephone, television or other electronic means if each participant in the conference has an opportunity to participate in, to hear, and if technically feasible, to see the entire proceeding while it is taking place.

006.02 **Discovery in Contested Cases.**

006.02A The hearing officer or designee, at the request of any party or upon the hearing officer's own motion, may issue subpoenas, discovery orders, and protective orders in accordance with the rules of civil procedure except as may be otherwise prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

006.02B Any prehearing motion to compel discovery, motion to quash, motion for protective order or other discovery-related motion shall:

006.02B1 Quote the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena or excerpt of a deposition;

006.02B2 State the reasons supporting the motion;

006.02B3 Be accompanied by a statement setting forth the steps or efforts made by the moving party or representative to resolve by agreement the issues raised and that agreement has not been achieved; and

006.02B4 Be filed with the Department. The moving party must serve copies of all such motions to all parties in the contested case.

006.02C Other than is provided in subsection 006.02B above, discovery materials need not be filed with the Department.

006.03 **Continuances.** The hearing officer may, in his or her discretion, grant extensions of time, or continuances of hearing upon the hearing officer's own motion, or at the timely request of any party for good cause shown. A party must file a written motion for continuance which states in detail the reasons why a continuance is necessary and serve a copy of the motion on all other parties.

006.03A **Good Cause.** Good cause for an extension of time or continuance may include but is not limited to, the following:

006.03A1 Illness of the party, representative, or witnesses;

006.03A2 A change in legal representation; or

006.03A3 Settlement negotiations which are underway.

006.04 **Amendments.**

006.04A A petition may be amended at any time before an answer is filed or is due if notice is given to the respondent or his or her attorney. In all other cases, the appellant must request permission to amend from the hearing officer.

006.04B A hearing officer may also allow in his or her discretion, the filing of supplementary pleadings alleging facts material to the case after the original pleadings were filed. A hearing officer may also permit amendment of pleadings where a mistake appears or when the amendment does not materially change a claim of defense.

006.05 **Informal Disposition.** Unless otherwise precluded by law, informal disposition may be made of a contested case by stipulation, agreed settlement, consent order, or default.

007 **CONDUCTING A CONTESTED CASE HEARING.**

007.01 **Order of Hearing.** At the discretion of the hearing officer, the hearing may be conducted in the following order:

007.01A **Call to Order.** The hearing shall be called to order by the hearing officer, who shall introduce him or herself, enter appearances, and state the scope and purpose of the hearing. Any preliminary motions, stipulations or agreed orders are entertained and may be disposed of by the hearing officer.

007.01B **Opening Statement.** Each party may be permitted to make an opening statement at the discretion of the hearing officer. Opening statements shall be in the same order as the presentation of evidence.

007.01C **Presentation of Evidence.** Documentary evidence may be marked, and where appropriate, may be offered by either party, prior to the taking of any testimony.

007.01C1 **Order.** Evidence will be received in the following order:

007.01C1a Evidence is presented by the appellant;

007.01C1b Evidence is presented by the Department;

007.01C1c Rebuttal evidence is presented by the appellant; and

007.01C1d Surrebuttal evidence is presented by the respondent.

007.01C2 **Witnesses.** With regard to each witness who testifies, the following examination may be conducted:

007.01C2a Direct examination conducted by the party who calls the witness;

007.01C2b Cross examination by the opposing party;

007.01C2c Any Redirect as necessary; and

007.01C2d Any Recross as necessary.

007.01D **Closing Argument.** After the evidence is presented, at the discretion of the hearing officer, each party may have the opportunity to make a closing argument. Closing argument shall be made in the same order as the presentation of evidence. The hearing officer may request that the parties present briefs in lieu of closing arguments. The hearing officer shall specify the date such briefs shall be received by the Department.

007.02 **Evidence.** The hearing shall be conducted informally unless a party requests the rules of evidence pursuant to 007.02B.

007.02A In contested cases, the Department or hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

007.02B **Formal Hearings.** Any party to a formal hearing before the Department, from which a decision may be appealed to the courts of this state, may request that the Department be bound by the rules of evidence applicable in district court by delivering to the Department at least three (3) days prior to the holding of the hearing, a written request for the rules of evidence. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby, and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing.

007.02C Documentary evidence may be received in the form of copies or excerpts or incorporated by reference.

007.02D All evidence including records and documents in the possession of the Department of which it desires to avail itself shall be offered and made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case.

007.02E A hearing officer or designee may administer oaths and issue subpoenas in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

007.02F The Department shall recognize and give effect to the rules of privilege recognized by law.

007.02G The Department may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge and the rules and regulations adopted and promulgated by such agency.

007.02G1 Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of materials so noticed.

007.02G2 Parties shall be afforded an opportunity to contest facts so noticed.

007.02G3 The record shall contain a written record of everything officially noticed.

007.02H The Department may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.

007.03 **Conducting the Hearing by Electronic Means.** The hearing officer may conduct all or part of the hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, and if technically feasible, to see the entire proceeding while it is taking place. When a hearing is conducted electronically:

007.03A **Department-s Exhibits.** The Department shall serve the appellant with a copy of the official exhibits in its casefile by facsimile transmission or by mailing them to the address of the appellant or his or her representative. Each exhibit shall be premarked for ease of identification; and

007.03B **Appellant-s Exhibits.** Any exhibits the appellant wishes to offer in addition

to the Department's exhibits shall be submitted to and received by the Department no later than five (5) days prior to the date of the hearing. If such exhibits are not both filed and received by the Department within the time specified, such exhibits will not be admitted unless substantial injustice will result.

007.04 Official Record.

007.04A Transcripts. The Department shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purpose of rehearing or appeal, in which event the transcript and record shall be furnished by the agency upon request and tender of the cost of preparation.

007.04B Official Record. The Department shall maintain an official record of each contested case under the Administrative Procedure Act for at least four (4) years following the date of the final order.

007.04B1 The Department shall tape record each informal hearing to be available for the preparation of a transcript upon the appellant's request pursuant to 007.04A.

007.04B2 In the case of a formal hearing, the court reporter shall keep the record at hearing pursuant to 007.02B which shall be made available for preparation of a transcript pursuant to 007.04A.

007.04C Contents of Record. The agency record shall consist of the following:

007.04C1 Notices of all proceedings.

007.04C2 Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Department pertaining to the contested case;

007.04C3 The record of the hearing before the Department, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the Department during the proceeding, and all proffers of proof and objections and rulings thereon; and

007.04C4 The final order.

007.04D Ex Parte Communications. As provided in section 002.03 of these rules and regulations, the hearing officer or agency head, or employee who is or may reasonably be

expected to be involved in the decision making process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication as set forth in that subsection shall make the appropriate filings which shall be included in the official record of the contested case.

007.04E Except to the extent that the Administrative Procedure Act or another statute provides otherwise, the agency record shall constitute the exclusive basis for agency action in contested cases under the act and for judicial review thereof.

007.05 **Costs.** All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered.

008 **DECISION AND ORDER IN A CONTESTED CASE.**

008.01 **Order.** Every decision and order adverse to a party to the proceeding, rendered by the Department in a contested case, shall be in writing or state in the record and shall be accompanied by findings of fact and conclusions of law.

008.02 **Order, Contents.** The decision and order should include:

008.02A The name of the agency and the name of the proceeding;

008.02B The time and place of the hearing;

008.02C The names of all parties or their attorneys who entered an appearance at the hearing;

008.02D The findings of fact consisting of a concise statement of the conclusions upon each contested issue of fact;

008.02E The conclusions of law consisting of the applications of the controlling law to the facts found and the legal results arising therefrom; and

008.02F The order consisting of the action taken by the Department as a result of the facts found and the legal conclusions arising therefrom.

008.03 **Delivery of Order.** Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record.

009 APPEALS.

009.01 Appeal of Decision. Any person aggrieved by a final decision in a contested case is entitled to a judicial review under the Administrative Procedure Act.

009.02 Filing. Parties desiring to appeal a Department decision must file a petition for review in the district court of the county where the agency action is taken within thirty (30) days after the service of the final decision by the Director. The thirty-day (30-day) period for appeal commences to run from the date of mailing of the decision and order to the parties or their attorneys of record. Service of the petition and summons must be made in accordance with Nebraska law.

009.03 Appeal Procedures. Unless otherwise provided by statute, the procedures of Neb. Rev. Stat. 84-917 govern the procedure for taking an appeal.

010 REPORTS AND RETURNS, ELECTRONIC FILING AND POWERS OF THE DEPARTMENT.

010.01 Required Information. The Department may require the taxpayer to submit any information it deems necessary as allowed by 66-718 or the agreement.

010.02 Filing Reports and Returns. The Department may proscribe formats or procedures for filing consistent with the intent of 66-718, including procedures for electronic filing for the reporting of motor fuel information.

010.03 Failure to File. Any person who does not file electronically or does not file as otherwise provided by the Department when required, or who fails to use the prescribed formats and procedures, shall be considered to have not filed the return, report, or other filing.

010.04 Reporting Dates. All licensees must submit an IFTA return, Form 75, every quarter, even if no taxable fuel was used. All returns are due on a quarterly basis. The reporting quarters and due dates are:

January - March April 30
April - June July 31
July - September October 31
October - December January 31

Tax returns must be postmarked not later than midnight on the date indicated to avoid a penalty for late filing.

011 PENALTIES.

011.01 Prohibited Acts. Any person who neglects or refuses to file the report or return due for any period or to pay the tax due for any period within the time prescribed for the filing of such report or return or for the payment of such tax under the motor fuel laws shall automatically accrue a penalty of fifty dollars (\$50).

011.02 Activities Conducted Without a License. Any person who knowingly conducts any activities requiring a license or permit under the motor fuel laws without a license or permit or after a license or permit has been surrendered, suspended, revoked, or cancelled shall automatically accrue a penalty of one hundred dollars for each day such violation continues.

011.03 Department's Discretion -- Penalties. The Department may in its discretion waive all or any portion of the penalties incurred upon sufficient showing by the taxpayer that the failure to file or pay is not due to negligence, intentional disregard of the law, rules, or regulations, intentional evasions of the tax, or fraud committed with intent to evade the tax or that such penalties should otherwise be waived.

011.04 Department's Discretion -- Interest. The Department may in its discretion waive any and all interest incurred upon sufficient showing by the taxpayer that such interest should be waived. Interest may only be waived if:

011.04A Interest is due to an error or unreasonable delay by the Department.

011.04B Interest is due to erroneous written advice by the Department when the advice was a direct response to a written request for advice from the taxpayer and the taxpayer reasonably relied on the advice; or

011.04C Interest is due because of an amount erroneously refunded if the taxpayer did not request the refund and the refund was not caused by information provided by the taxpayer.

011.04D Interest, Calculation. All deficiencies determined by the Department and any tax paid after the time provided shall accrue interest at the rate of one per cent (1%) per month, or twelve per cent (12%) per year on such deficiency or late payment from the date such tax was due to the date of payment.

012 LICENSE OR PERMIT, ISSUANCE; SUSPENSION OR REVOCATION; GROUNDS; PROCEDURE; CANCELLATION; REINSTATEMENT FEE.

012.01 Issuance of Permit or License; Denial. After reviewing an application received in

proper form, the Department may issue to the applicant a permit or license.

012.01A The Department may refuse to issue a permit or license to any person:

012.01A1 Who previously had a permit or license issued under the motor fuel laws of any state which prior to the time of filing the application, has been suspended or revoked for cause;

012.01A2 Who is a subterfuge for the real party in interest whose license, prior to the time of filing of the application, has been suspended or revoked for cause;

012.01A3 Which has a partner, limited liability company member, or shareholder with a ten percent (10%) or larger ownership interest, any person who is unable to obtain a license or permit in his or her own name;

012.01A4 Who has been convicted of a felony in the last ten (10) years; or

012.01A5 Upon other sufficient cause being shown.

012.01B **Hearing.** Before refusing to issue a permit or license, the Department shall grant a hearing and shall grant him or her at least ten (10) days written notice of the time and place of the hearing.

012.02 **Grounds for Suspension or Revocation.** Any license or permit issued by the Department under IFTA may be suspended or revoked for the following reasons:

012.02A Cancellation of security;

012.02B Failure to provide additional security as required;

012.02C Failure to file any report or return, filing an incomplete report or return, or not filing electronically, within the time provided;

012.02D Failure to pay taxes due within the time provided;

012.02E Filing of any false report, return, statement, or affidavit, knowing it to be false;

012.02F No longer being eligible to obtain a license or permit; or

012.02G Any grounds for suspension or revocation provided by statute or any other violation of the motor fuel laws or the rules and regulations, or convictions for violations

of law pursuant to Neb. Rev. Stat. 66-727.

012.03 Notice of Suspension or Revocation. The Department shall mail notice of suspension of any license or permit as provided in section 004.10 of these rules and regulations.

012.04 Petition to Appeal License Suspension or Revocation; Department Response. The licensee or permit holder may, within thirty (30) days after the mailing of the notice of such suspension or revocation, petition the Department in writing for a hearing and reconsideration of such suspension or revocation as provided in 004 of these rules and regulations. If a petition is filed, the Department shall, within ten (10) days of the receipt of the petition, set a hearing date at which the licensee or permit holder may show cause why his or her suspended or revoked license or permit should not be suspended or revoked. The Department shall give the licensee or permit holder reasonable notice of the time and place of such hearing. Within a reasonable time after the conclusion of the hearing, the Department shall issue an order either reinstating or canceling such license or permit.

012.05 No Petition Filed. If a petition is not filed within the thirty-day (30-day) period, the suspended license or permit shall be revoked by the Department at the expiration of the thirty-day (30-day) period.

012.06 Reinstatement. Any licensee who has been revoked shall require a reinstatement fee of one hundred dollars (\$100) to be submitted to the Department and all delinquencies shall be satisfied and, at the discretion of the Director, a fuel tax bond is secured. The Department shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.

012.07 Duty to File Reports or Returns. Suspension or revocation or cancellation of a license or permit issued by the Department shall not relieve any person from making or filing the reports or returns required by IFTA in the manner or within the time required by the agreement.

013 REVIEW OF RETURNS BY DEPARTMENT AND DEFICIENCY DETERMINATIONS AND PROCEDURE.

013.01 Examination. As soon as practical after a return is filed, the Department shall examine it to determine the correct amount of tax. If the Department finds that the amount of tax shown on the return is less than the correct amount, it shall notify the taxpayer of the amount of deficiency determined.

013.02 Failure to File. If any person fails to file a return, the Department shall estimate the person's liability from any available information and notify the person of the amount of the

deficiency determined.

013.03 Final Assessment. The amount of the deficiency determined shall constitute a final assessment together with interest and penalties thirty (30) days after the date on which notice was mailed to the taxpayer at his or her last known address unless a written protest is filed with the Department within such thirty-day (30-day) period.

013.04 Final Decision. The final assessment provision of 013.03 shall constitute a final decision for purposes of the Administrative Procedure Act.

013.05 Presumption. An assessment made by the Department shall be presumed to be correct. In any case when the validity of the assessment is questioned, the burden shall be on the person who challenges the assessment to establish by a preponderance of the evidence that the assessment is erroneous or excessive.

013.06 Expiration Period and Extensions.

013.06A Except in the case of fraudulent return or of neglect or refusal to make a return, the notice of proposed deficiency determination shall be mailed within three (3) years after the last date of the month following the end of the period for which the amount proposed is to be determined of within three (3) years after the return is filed, whichever expires later.

013.06B The taxpayer and the Department may agree, prior to the expiration of the period in 013.06A, to extend the period during which the notice of deficiency determination can be mailed. The extension of the period for mailing of a deficiency determination shall also extend the period during which a refund can be claimed.

014 AUDITS.

014.01 Compliance with Procedures. All audits conducted by the Department shall be in compliance with the requirements that are established in the agreement and shall follow the procedures as outlined in the IFTA procedures manual.

014.02 Notifications. The Department shall notify the licensee in writing and any member jurisdictions in which operations were conducted of the findings of the audit.

014.03 Audits Performed Prior to July 1, 1996. Any audit performed by the Nebraska Department of Revenue for IFTA purposes may be relied upon for purposes of enforcement of IFTA by the Nebraska Department of Motor Vehicles on or after July 1, 1996 pursuant to the transfer of authority for the administration of the IFTA program in LB 1218, 1996.

015 CORPORATE OFFICER OR EMPLOYEE; PERSONAL LIABILITY; COLLECTION OF TAXES; PROCEDURES; HEARING.

015.01 Personal Liability. Any corporate officer or employee with the authority to decide whether the corporation will pay the taxes imposed upon a corporation by IFTA, to file any reports or returns required by IFTA, or to perform any other act required of a corporation under IFTA shall be personally liable for the payment of the taxes, interest, or penalties in the event of a willful failure on his or her part to have the corporation perform such act. Such taxes shall be collected in the same manner as provided for under the Uniform State Tax Lien Registration and Enforcement Act.

015.02 Challenge. Within thirty (30) days after the day on which the notice and demand are made for payment of such taxes, any corporate officer or employee seeking to challenge the Director's determination as to his or her personal liability for the corporation's unpaid taxes may petition for a redetermination. The petition may include a request for the redetermination of the personal liability of the corporate officer or employee, the redetermination of the amount of the corporation's unpaid taxes, or both. If a petition for redetermination is not filed within the thirty-day period, the determination becomes final at the expiration of the period.

015.03 Abatement of Collection. If the requirements prescribed in 015.02 of this section are satisfied, the Director shall abate collection proceedings and shall grant the corporate officer or employee an oral hearing and give him or her ten (10) days' notice of the time and place of such hearing. The Director may continue the hearing from time to time as is necessary.

015.04 Notice. Any notice required under section 015 shall be as provided in 004.10 of these rules and regulations, except as provided in 004.11.

015.05 Delay. If the Director determines that further delay in the collection of such taxes from the corporate officer or employee will jeopardize further collection proceedings, nothing in this section shall prevent the immediate collection of such taxes.

015.06 Terms Defined for Purposes of Section 015. For purposes of this section:

015.06A Taxes shall mean all taxes and additions to taxes including interest and penalties imposed under IFTA which are administered by the Director; and

015.06B Willful failure shall mean that failure which was the result of an intentional, conscious, and voluntary action.

016 RECORD-KEEPING REQUIREMENTS. Records shall be kept as specified in the

International Fuel Tax Agreement for a period of four (4) years from the date of the return or the date filed, whichever is later. The Department may examine the records of any person holding a license or permit, required to hold a license or permit, or purchasing motor fuel without the payment of tax at any time during regular business hours and make such other investigations as it deems necessary for the proper and efficient administration and enforcement of IFTA. A licensee's records must include mileage data for each trip of each individual vehicle, and be restated in monthly fleet summaries.

016.01 **Supporting Mileage Information.** Supporting mileage information shall include:

016.01A Beginning and end dates of trip;

016.01B Trip origin and destination;

016.01C Routes of travel (may be waived by Department);

016.01D Beginning and ending odometer reading of the trip (may be waived by the Department);

016.01E Total trip miles;

016.01G Unit number or vehicle identification number;

016.01H Vehicle fleet number; and

016.01I Name of licensee.

016.02 **Invoices or Billing Documents.** No tax-paid credit fuel shall be allowed pursuant to IFTA unless licensee is able to distinguish fuel used by qualified versus non-qualified motor vehicles as specified in the agreement.

017 **REFUNDS; WHEN ALLOWED.**

017.01 **Minimum.** No refund shall be made in any amount less than two dollars (\$2).

017.02 **Other Jurisdictions Satisfied.** Refunds to a licensee will be made only when all tax liabilities, including audit assessments, have been satisfied to all member jurisdictions pursuant to IFTA.

017.03 The Department shall refund the tax paid on motor fuel purchased on a Nebraska Indian reservation if the purchaser is a Native American who resides on the reservation.

018 CANCELLATION PROCEDURES. Upon cancellation by either the licensee or by the Department, the licensee shall:

018.01 Return the licensee's IFTA Permit (be sure that it is signed on the reverse side);

018.02 Remove the decals from the cab(s);

018.03 File the mileage and fuel tax return for your last quarter with the proper remittance, if applicable.

018.04 Cancellation of a license or permit issued by the Department shall not relieve any person from making or filing the reports or returns required by IFTA in the manner or within the time required by the agreement.

Attachment 1 -- 251 NAC, Chapter 1



PETITION FOR APPEAL
UNDER THE INTERNATIONAL FUEL

VEHICLES

NEBRASKA DEPARTMENT OF MOTOR

Any person licensed under the International Fuel Tax Agreement (IFTA) by the State of Nebraska may file an appeal of an action by the Department under IFTA within thirty (30) days of the date of the written notice by the Department. The petition and all pleadings must be filed with the Department of Motor Vehicles Legal Division, 301 Centennial Mall South, First Floor, P.O. Box 94789, Lincoln, NE 68509-4789. Filing may be accomplished by personal delivery or mail and will be received during the Department's regular officer hours.

Name:	
Company Name:	
Mailing Address:	
Phone Number: ()	IFTA Identification Number/s:
Attorney name and address:	Attorney phone number: ()
Accountant name and address:	Accountant phone number: ()

I object to the following action by the Department (check any that apply):

- ☐ I am protesting the Deficiency Determination dated _____.
- ☐ I am appealing the suspension or revocation of my IFTA license.
- ☐ I am appealing the denial of an IFTA license.
- ☐ I am challenging the determination of personal liability as a corporate officer or employee.

Why do you think the Department's decision or determination is wrong?

_____ Check here and enclose a \$1.00 for copying charges for a copy of the appeal procedure rules and regulations governing IFTA hearings, 251 NAC, Chapter One. DO NOT SEND CASH.

Payment of a tax amount of a deficiency determination stops the accumulation of interest but does not affect your right to appeal a determination. Filing of this protest does NOT stop your obligation to file a quarterly IFTA return if you are a licensee.

Signature

Date

Deliver this petition to the Department of Motor Vehicles Legal Division, 301 Centennial Mall South, First Floor, P.O. Box 94789, Lincoln, NE 68509-4789.

Phone: (402) 471-9593

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